IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1313 of 2007

Somasundari .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary
Home, Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Greater Chennai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 16.6.2007against the petitioners husband Manivannan S/o. Kumar, aged 24 years BDFGISSV/246/2007 who is confined at Central Prison, Chennai and set aside the same and direct the respondents to produce the detenu before this Honourable Court and set him at liberty.

For Petitioner : Mr.C.V.Kumar

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 16.6.2007 was passed on the basis of ground case in Crime No.488 of 2007 for alleged commission of offences under Sections 341, 336, 397 and 506(2) IPC, complaint of which was lodged by one Rajendran. According to Rajendran, on 27.5.2007, while he was proceeding to Kalashetra Road near the Pillaiyar Temple junction a share auto bearing Reg.No.TN 07 AE 8618 crossed him and stopped and eight persons, including the detenu were in it. Four of them got down from the share auto. The associates of the detenu, Vijayakumar and Arul inserted hands into the shirt pocket of the complainant and took away cell phone and cash of Rs.200/- and threatened to kill him. When the detenu and others got into auto and tried to escape, the complainant raised hue and cry and hearing that again accused and his associates got down from the auto and pelted stones on him. The public who were at the spot noticing the atrocious activities ran for safer places out of fear of danger to their lives and properties. Based on the complaint given by him a case, as stated above, was registered and the detenu was arrested.

2.2. Apart from the above, the detaining authority also took not of the four adverse cases pending against the detenu, viz.,

i. Crime No.73 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 392 and 397 of IPC with reference to the occurrence said to have taken place on 25.1.2007;

ii. Crime No.438 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 392 and 397 of IPC with reference to the occurrence said to have taken place on 11.5.2007;

iii. Crime No.478 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 395 and 397 of IPC with reference to the occurrence said to have taken place on 25.5.2007; and

iv. Crime No.479 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 395 and 397 of IPC with reference to the occurrence said to have taken place on 25.5.2007.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

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3. Challenging the said detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 16.6.2007 against the detenu, who is now confined at Central Prison, Chennai, to set aside the same and to direct the respondent to produce the detenu before this Court and to set him at liberty.

4. Heard the learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider

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whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 16.6.2007. A representation was made to the Government on 6.7.2007 and the same was received by it 26.7.2007. Remarks were called for from the detaining authority on 27.7.2007 and the remarks of the detaining authority, after obtaining the remarks of the sponsoring authority, were received by the Government on 1.8.2007. The file was considered by the Under Secretary and the Additional Secretary on 6.8.2007 and the Hon'ble Minister dealt with the file on 7.8.2007. However, the rejection order was prepared on 14.8.2007, viz., after a delay of five days, excluding two public holidays. The delay in considering the representation, as indicated above, was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore

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the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

The delay which stands unexplained is fatal to the detention order attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 16.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to Government
   State of Tamilnadu
   Home, Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The Commissioner of Police
   Greater Chennai
   Chennai.

3. The Public Prosecutor
   High Court, Madras.

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4. The Superintendent
central Prison, Puzhal, Chennai

5. The Joint Secretary to Government
Public (Law and order) Fort St. George,
Chennai-9.

1 cc to Mr.C.V. Kumar, Advocate, Sr. 71503

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